

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

NH LEARNING SOLUTIONS CORPORATION,
a Michigan corporation, and
5PNH HOLDING COMPANY, LLC,
a Texas limited liability company,,

Plaintiffs,

v.

NEW HORIZONS FRANCHISING GROUP, INC.,
a Delaware corporation,

Defendant.

Case No.: 2:20-cv-10904

Justice Hon. Linda V. Parker

**DECLARATION OF GREGORY E. MARSELLA IN SUPPORT OF
DEFENDANT'S MOTION TO COMPEL ARBITRATION AND DISMISS
OR STAY**

DECLARATION OF GREGORY E. MARSELLA

I, GREGORY E. MARSELLA, DECLARE AS FOLLOWS:

1. I am Senior Vice President & General Counsel of New Horizons Franchising Group, Inc. (“New Horizons”), Defendant in the above-entitled action. I have personal knowledge of the facts set forth herein, and if called as a witness to testify thereto, I could and would competently and truthfully do so.

2. Over the last 25 years, Plaintiffs NH Learning Solutions Corporation (“NHLS”) and 5PNH Holding Company LLC (“5PNH”) have, taken together, entered into no fewer than thirty-five (35) franchise agreements with New Horizons, each including an arbitration agreement, as set forth below.

II. 5PNH’S AGREEMENTS TO ARBITRATE

3. On July 1, 2016, 5PNH entered into a Franchise Agreement (the “5PNH Austin Franchise Agreement”) in connection with the purchase of the right to operate a New Horizons franchise in Austin Texas. A true and correct copy of the 5PNH Austin Franchise Agreement is attached hereto as Exhibit B.

4. Over the second half of 2016, 5PNH entered into the following ten additional Franchise Agreements:

a. Three July 1, 2016 Franchise Agreements in connection with the purchase of the rights to operate New Horizons franchises in Dallas and San Antonio, Texas and Kansas City, Kansas.

b. An August 8, 2016 Franchise Agreement in connection with the purchase of the right to operate a New Horizons franchise in Albuquerque, New Mexico.

c. Four September 1, 2016 Franchise Agreements in connection with the purchase of the rights to operate New Horizons franchises in New Orleans, Louisiana, Tulsa, Oklahoma, Cincinnati, Ohio, and Louisville, Kentucky.

d. A November 14, 2016 Franchise Agreement in connection with the purchase of the right to operate a New Horizons franchise in Cedar Rapids, Iowa.

e. A December 1, 2016 Franchise Agreement in connection with the purchase of the right to operate a New Horizons franchise in Houston, Texas.

I have personally reviewed each of these ten Franchise Agreements, and each includes an arbitration clause identical to, or substantively identical to, that included in the 5PNH Austin Franchise Agreement. New Horizons can and will provide true and correct copies of each of these ten additional Franchise Agreements to the Court upon request.

5. On January 1, 2018, 5PNH entered into nine Assignment and Assumption of Franchise Agreements (the “5PNH Assignments”) by which it acquired:

- a. The Baltimore, Maryland franchise owned by GBWH Baltimore, LLC.
- b. The Birmingham, Alabama, Gainesville, Florida and Greensboro, North Carolina franchises owned by Suksabi LLC.
- c. The Charlotte, North Carolina franchise owned by Sukothai, Inc.
- d. The Columbia, South Carolina franchise owned by Saba-Jai, LLC.
- e. The Harrisburg, Pennsylvania franchise owned by Sabai, Inc.
- f. The Indianapolis, Indiana franchise owned by GBWH Indianapolis, LLC.
- g. The Memphis, Tennessee franchise owned by Integrated Learning Solutions Memphis, LLC.

I have personally reviewed each of the nine 5PNH Assignments and, by each—as in the NHLS Philadelphia Assignment discussed below and provided as an exhibit—NHLS agreed “to assume and undertake all obligations of Assignor of whatever nature under the Franchise Agreement, including all exhibits thereto... .” (or language substantively identical to that). Further, each of the Franchise Agreements attached, respectively, to each of the 5PNH Assignments—all obligations in which

5PNH was assuming—includes an arbitration clause identical to, or substantively identical to, that included in the 5PNH Austin Franchise Agreement. New Horizons can and will provide true and correct copies of the 5PNH Assignments and their included Franchise Agreements to the Court upon request.

II. NHLS’S AGREEMENTS TO ARBITRATE

6. On June 1, 2018, NHLS entered into an Assignment and Assumption of Franchise Agreement (the “NHLS Philadelphia Assignment”) in which it acquired the Philadelphia, Pennsylvania franchise owned by NH Philadelphia, LLC. A true and correct copy of the NHLS Philadelphia Assignment is attached hereto as Exhibit C.

7. Also on June 1, 2018, NHLS entered into three further Assignment and Assumption of Franchise Agreements by which it acquired the Long Island, Westchester County and New York City, New York franchises owned by NH New York City, LLC. (collectively, the “NHLS New York Assignments”). I have personally reviewed the NHLS New York Assignments and, by each, as in the NHLS Philadelphia Assignment, NHLS agreed “to assume and undertake all obligations of Assignor of whatever nature under the Franchise Agreement, including all exhibits thereto,” Further, as with the Franchise Agreement attached to the NHLS Philadelphia Assignment, each of the Franchise Agreements attached, respectively, to each of the NHLS New York Assignments—all obligations in which NHLS was assuming—includes an arbitration clause identical to, or substantively identical to, that included in the 5PNH Austin Franchise Agreement. New Horizons can and will provide true and correct copies of the NHLS New York Assignments and their included Franchise Agreements to the Court upon request.

8. On December 12, 2001, California limited liability company M&J LLC entered into a Franchise Agreement (the “M&J Detroit Franchise Agreement”) in connection with the purchase of the right to operate a New Horizons franchise in Detroit, Michigan. On December 12, 2006, M&J LLC and New Horizons of

Michigan Holding Corporation (“NHMH”)—among others—entered into a First Amendment to the M&J Detroit Franchise Agreement by which—among other things—NHMH became party to the M&J Detroit Franchise Agreement as an “Equity Holder.” On June 11, 2011, the parties entered into a further, Fourth Amendment by which—among other things—the parties acknowledged the legal name change of NHMH to New Horizons Great Lakes Holding Corporation (“NHGLH”). On June 11, 2016, the parties entered into a further, Fifth Amendment by which—among other things—the parties acknowledged the legal name change of NHGLH to NH Learning Solutions Corporation (i.e. Plaintiff NHLS). I have personally reviewed the M&J Detroit Franchise Agreement, and it includes an arbitration clause identical to, or substantively identical to, that included in the 5PNH Austin Franchise Agreement. New Horizons can and will provide true and correct copies of the M&J Detroit Franchise Agreement and its First, Fourth and Fifth Amendments to the Court upon request.

9. On March 31, 2007, NHMH entered into a Franchise Agreement (the “NHMH Cleveland Franchise Agreement”) in connection with the purchase of the right to operate a New Horizons franchise in Cleveland, Ohio. On June 11, 2011, the parties entered into a Second Amendment by which—among other things—the parties acknowledged the legal name change of NHMH to NHGLH. On June 11, 2016, the parties entered into a further, Third Amendment by which—among other things—the parties acknowledged the legal name change of NHGLH to NHLS (Plaintiff here). I have personally reviewed the NHMH Cleveland Franchise Agreement, and it includes an arbitration clause identical to, or substantively identical to, that included in the 5PNH Austin Franchise Agreement. New Horizons can and will provide true and correct copies of the NHMH Cleveland Franchise Agreement and its Second and Third Amendments to the Court upon request.

10. Also on March 31, 2007, NHMH entered into a Franchise Agreement (the “NHMH Chicago Franchise Agreement”) in connection with the purchase of the right to operate a New Horizons franchise in Chicago, Illinois. On June 11, 2011, the parties entered into a Second Amendment by which—among other things—the parties acknowledged the legal name change of NHMH to NHGLH. On June 11, 2016, the parties entered into a further, Third Amendment by which—among other things—the parties acknowledged the legal name change of NHGLH to NHLS (Plaintiff here). I have personally reviewed the NHMH Chicago Franchise Agreement, and it includes an arbitration clause identical to, or substantively identical to, that included in the 5PNH Austin Franchise Agreement. New Horizons can and will provide true and correct copies of the NHMH Chicago Franchise Agreement and its Second and Third Amendments to the Court upon request.


11. On February 1, 2010, Michigan limited liability company NH West Michigan LLC (“NHWM”) entered into a Franchise Agreement (the “NHWM Grand Rapids Franchise Agreement”) in connection with the purchase of the right to operate a New Horizons franchise in Grand Rapids, Michigan. On June 11, 2011, NHWM, and NHGLH—among others—entered into a Second Amendment to the NHWM Grand Rapids Franchise Agreement by which—among other things—NHGLH became party to the NHWM Grand Rapids Franchise Agreement as an “Equity Holder.” On June 11, 2016, the parties entered into a further, Third Amendment by which—among other things—the parties acknowledged the legal name change of NHGLH to NHLS (Plaintiff here). I have personally reviewed the NHWM Grand Rapids Franchise Agreement, and it includes an arbitration clause identical to, or substantively identical to, that included in the 5PNH Austin Franchise Agreement. New Horizons can and will provide true and correct copies of the NHWM Grand Rapids Franchise Agreement and its Second and Third Amendments to the Court upon request.

12. On August 1, 2014, limited liability company NHNE LLC ("NHNE") entered into seven Franchise Agreements in connection with the purchase of the rights, respectively, to operate New Horizons franchises in Fairfield, Connecticut, Hartford, Connecticut, Boston, Massachusetts, Nashua, New Hampshire, Iselin, New Jersey, Princeton, New Jersey, and Providence, Rhode Island. I have personally reviewed each of these seven Franchise Agreements, and each includes an arbitration clause identical to, or substantively identical to, that included in the 5PNH Austin Franchise Agreement. I have also personally reviewed documents provided by NHNE to New Horizons that show that NHLS is the sole member of NHNE. New Horizons can and will provide true and correct copies of the these seven Franchise Agreements and the NHNE membership documents referenced above to the Court upon request.

13. Attached here to as Exhibits D and E, Respectively, are true and correct copies of the Virtual Delivery Program Participation Agreements Entered into by New Horizons with, respectively, NHLS and 5PNH on May 6, 2019. These exhibits have been redacted to shield confidential business arrangements which are not relevant to the Court's determination of this Motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 3, 2020.



Gregory E. Marsella